

**FOR CLERK USE ONLY**

City Council

Item No. 7

## CITY COUNCIL AGENDA FACT SHEET

COMMUNITY DEVELOPMENT

Department

18-May-10

Requested Date

**1. Request:**

Council Approval

☒Information Only/  
Presentation☐

Other (specify)

☐

Hearing

☐**2. Requested Action:**

AN INTERIM ORDINANCE ENACTING AN URGENCY MEASURE PROHIBITING COOPERATIVE, COLLECTIVE, OR OTHER FORMS OF MARIJUANA DISPENSARIES DURING A SPECIAL STUDY PERIOD FOR 45-DAYS

**3. Fiscal Impact:**

Revenue:

Increase

☐

Source: \_\_\_\_\_

Decrease

☐

Amount: \_\_\_\_\_

Cost:

Increase

☐

Source: \_\_\_\_\_

Decrease

☐

Amount: \_\_\_\_\_

Does Not Apply

☒**4. Reviewed By:**

Finance Dept. on \_\_\_\_\_

By: \_\_\_\_\_

Comments: \_\_\_\_\_

City Attorney on \_\_\_\_\_

By: \_\_\_\_\_

Comments: \_\_\_\_\_

*Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.*

**CLERK USE ONLY:**

CITY COUNCIL DATE: \_\_\_\_\_

Action

☐

Filing

☐

Consent

☐

Presentation

☐

Hearing

☐

Other(specify) \_\_\_\_\_

☐

Reviewed by: City Clerk \_\_\_\_\_

City Manager \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

## **CITY COUNCIL AGENDA REPORT**

**SUBJECT: AN INTERIM ORDINANCE ENACTING AN URGENCY MEASURE PROHIBITING COOPERATIVE, COLLECTIVE, OR OTHER FORMS OF MARIJUANA DISPENSARIES DURING A SPECIAL STUDY PERIOD FOR 45 DAYS.**

**AGENDA DATE:** May 18, 2010

**PREPARED BY:** Armando G. Villa, Assistant City Manager  
Jennifer M. Lyon, City Attorney



**APPROVED FOR AGENDA BY:** Victor Carrillo, City Manager

**RECOMMENDATION:** Consider adoption of the Ordinance.

**FISCAL IMPACT:** None.

**BACKGROUND INFORMATION: (Prior action/information):**

In 1996, voters approved Proposition 215, which allows people with serious illnesses, if they have a doctor's recommendation, to use medicinal marijuana. Later, the Legislature passed a law (S.B. 420) that allowed "cooperatives" and "collectives" to distribute medical marijuana to their members, but the Legislature did not clearly define what a "cooperative" or "collective" is, or what rules it would need to follow.

Despite Proposition 215 and S.B. 420, using marijuana is still illegal under federal law. The federal government had cracked down on medical marijuana dealers up until March 2009. Then, the U.S. Attorney General indicated the federal government might not prosecute medical marijuana dealers.

Since this decision by the federal government, cities in California have seen many applications to set up medical marijuana dispensaries, storefronts where people can buy their medical marijuana. Cities up and down the state have been struggling with how they can regulate these dispensaries. Regulating them is a significant concern for many cities, because those cities that allowed medical marijuana dispensaries have generally seen the proliferation of crime associated with them, including burglaries, weapons violations, and other drug crimes.

Some cities have banned dispensaries. Some have licensed and allowed them. Some of the cities that have banned them have been sued, and a major case deciding whether cities can ban dispensaries is on appeal, with a decision expected in the next few months.

## **DISCUSSION (Current consideration):**

It is not clear under Calexico's current Municipal Code whether medical marijuana dispensaries are allowed, and if so, what zone they can operate in.

Many cities are worried about regulating dispensaries because the law in this area is still unsettled. Further, dispensaries around the state have often attracted crimes like burglaries, weapons violations and other crimes. Also, cities have been worried that dispensaries might open up near schools or other sensitive land uses. It is clear that the City has the authority to regulate the location of any such business in the city pursuant to its police powers.

This is why some cities have passed moratorium ordinances like the one with this report. This moratorium would ban new medical marijuana dispensaries for 45 days so the city can start looking at how it wants to regulate medical marijuana dispensaries. If the city is not done studying what it wants to do, it can extend the moratorium for another 10 months and 15 days. If it still has not figured out what to do, it can extend the moratorium one last time, for one year. If the city takes all the time that it can, it will have a two-year moratorium on medical marijuana dispensaries.

The moratorium is an urgency ordinance. It takes at least a 4/5 vote to pass, and it goes into effect right away. Staff believes it is necessary for the City to take its time to decide the right way to deal with this issue based on the unique character of the City of Calexico and in order to sufficiently protect the health and welfare of its residents.

Attachments: Ordinance

**ORDINANCE NO. 2010-\_\_\_\_\_**

**AN INTERIM ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF CALEXICO ENACTING AN URGENCY MEASURE  
PROHIBITING COOPERATIVE, COLLECTIVE, OR OTHER  
FORMS OF MARIJUANA DISPENSARIES DURING A  
SPECIAL STUDY PERIOD FOR 45 DAYS**

**WHEREAS**, in 1996, the voters of the state of California approved Proposition 215 (codified as Health and Safety Code section 11362.5 et seq., and entitled "The Compassionate Use Act of 1996"); and

**WHEREAS**, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law; and

**WHEREAS**, as a result of Proposition 215, individuals have established medical marijuana dispensaries in various cities; and

**WHEREAS**, there is no state regulation or standard on the cultivation and/or distribution of medical marijuana and each local jurisdiction may establish local guidelines in accord with unique local concerns; and

**WHEREAS**, California cities wherein medical marijuana dispensaries have been established have experienced an increase in crime, such as burglary, robbery, and improper loitering around the dispensaries, an increase in pedestrian and vehicular traffic and noise in the vicinity of the dispensaries, and an increase in the sale of illegal drugs, including the illegal resale of marijuana from dispensaries, in the areas immediately surrounding such medical marijuana dispensaries; and

**WHEREAS**, in October 2005, the State Board of Equalization instituted a policy that allows medical marijuana dispensaries to obtain a seller's permit, thus enabling the state to collect sales tax on medical marijuana sales; and

**WHEREAS**, in 2005, five California cities (Rocklin, Roseville, Oakland, Hayward and Fairfax) were polled by the City of Concord regarding secondary effects of medical marijuana dispensaries in the cities, and such secondary effects included street dealers attempting to sell to patrons entering the dispensaries; smoking marijuana in public areas; driving while under the influence of marijuana; attempted burglaries of marijuana establishments; robberies of clients patronizing establishments; adverse impacts on neighboring businesses; physicians writing prescriptions for any patron regardless of medical infirmity; nuisance behavior of patrons; and illegal drug sales from dispensaries. The City of Davis prepared a report of secondary impacts which included similar experiences; and

**WHEREAS**, in February 2006, a clinic in Tustin was shut down by the police after an undercover officer was able to buy marijuana without a prescription, and in July

2006, several dispensaries were raided in San Diego and San Marcos for selling marijuana to persons without a prescription; and

**WHEREAS**, in July 2007, narcotics agents shut down Natures Medicinal, Inc., a medical marijuana dispensary in the city of Bakersfield and an employee of that clinic pleaded guilty in 2008 to conspiring to distribute and possess with intent to distribute approximately 188 pounds of marijuana; and

**WHEREAS**, in May 2008 a CHP officer was critically injured and another motorist killed in Ventura after an individual drifted onto the shoulder and struck the officer during a traffic stop. The driver was charged with driving while intoxicated, and an investigation into the incident found that he had a large amount of marijuana in the vehicle that he had purchased from a dispensary in Compton; and

**WHEREAS**, this stream of crime involving dispensaries has continued, with medical marijuana dispensaries around the state frequently being the targets of burglaries and with owners and proprietors of dispensaries regularly being convicted of firearms and non-marijuana drug-related offenses; and

**WHEREAS**, in March 2009, the U.S. Attorney General stated that federal law enforcement officials would ease enforcement at California medical marijuana establishments; and

**WHEREAS**, the City of Calexico has not adopted rules and regulations specifically applicable to the establishment and operation of dispensaries and the inability of the City to regulate these establishment in a manner that will protect the general public, homes and businesses adjacent to and near such businesses, and the patients or clients of such establishments; and

**WHEREAS**, based on the adverse secondary impacts experienced by other cities and the lack of any regulatory program in the City of Calexico regarding the establishment and operation of medical marijuana dispensaries, it is reasonable to conclude that negative effects on the public health, safety, and welfare may occur in Calexico as a result of the proliferation of medical marijuana dispensaries and the lack of appropriate regulations governing the establishment and operation of such facilities; and

**WHEREAS**, a medical marijuana dispensary currently is not expressly permitted or permitted subject to a conditional use permit in any zoning district in the City, and the City Council, as of the date of this meeting, has yet to make a determination as to whether marijuana dispensaries are a permitted use in any zone within the City; and

**WHEREAS**, the establishment of a medical marijuana dispensary in the City will result in a direct and immediate threat to the public health, safety, and welfare because the City does not currently regulate the location and operation of medical marijuana dispensaries and does not have a regulatory program in effect that will appropriately regulate the location, establishment, and operation of medical marijuana dispensaries in the City.

NOW, THEREFORE, the City Council of the City of Calexico does hereby ordain as follows:

**SECTION 1. Findings and Determination.** The City Council ("Council") of the City of Calexico ("City") does hereby find and determine that:

- (a) The City, pursuant to the police powers delegated to it by the California Constitution, has the authority to enact laws which promote, preserve and protect the public health, safety, and general welfare of its citizens; and
- (b) There is concern over the proliferation of medical marijuana dispensaries throughout the County and State, the seemingly unregulated status of these dispensaries, the allegations (often upheld in court) that many dispensaries are distributing marijuana for non-medical purposes, the prevalence of burglaries at medical marijuana dispensaries and the associated burden on local law enforcement, and the secondary effects associated with controlled substance distributions run by unlicensed personnel; and
- (c) There is concern that the City's existing land use and zoning regulations do not explain with sufficient clarity how they control the location and operation of medical marijuana dispensaries and as a consequence do not adequately protect the health, safety, and general welfare of the citizens of Calexico from the actual and potential impacts arising from those retail establishments; and
- (d) There is concern that these types of medical marijuana dispensaries are operating without paying their fair share of the expenses that they would impose on the City of Calexico; and
- (e) The Council wishes to study the potential options and effects of restricting the operation of medical marijuana dispensaries, considering all available options ranging from banning such dispensaries to determining appropriate location and operating requirements to considering how such businesses could pay the revenue necessary to address unintended or secondary consequences of their operation within the city limits; and

- (f) The Council has determined that there is a current and immediate threat to the public health, safety, or general welfare of the City's citizens in allowing essentially unregulated medical marijuana dispensaries to obtain licenses and operate within the City and that granting permits to such dispensaries would result in a threat to public safety, health, and general welfare during the term of the study of additional regulations of medical marijuana dispensaries; and
- (g) The 45-day initial moratorium procedure authorized by Government Code section 65858 will allow for the necessary study of the effects of regulating medical marijuana dispensaries on the City and of proposed regulatory measures, and therefore imposing a moratorium in order to provide time for study and review of the issues is required. The City Council needs time to consider potential options for regulating medical marijuana dispensaries either by the Council or by voters.

**SECTION 2. Emergency Measures.**

- (a) No business licenses, use permits, or zoning approvals for any Medical Marijuana Dispensary within the City shall be approved, authorized, or granted, until such time as the City Council of the City of Calexico has conducted an appropriate study of the effect of Medical Marijuana Dispensaries on the character of the City and the effect they may have on property values, density, and effective utilization of property in Calexico, and the legality and wisdom of various regulatory approaches toward Medical Marijuana Dispensaries, which study is intended to occur within a reasonable time.
  - (1) "Medical Marijuana Dispensary" means any person, business, organization, or land use involving or at any time engaged in the distribution of marijuana or related products within the City of Calexico, whether for medical purposes or otherwise.
- (b) Applications that have been submitted to the City but are not deemed complete as of the effective date of this Interim Ordinance, shall be subject to this Interim Ordinance.

**SECTION 3. Severability.** The City Council of the City of Calexico hereby declares that should any section, paragraph, sentence, phrase, term, or word of this Interim Ordinance hereby adopted be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other portions of this Interim Ordinance irrespective of any such portion declared invalid.

**SECTION 4. Effective Date; Expiration; Extension.** Pursuant to Government Code Section 65858, this interim ordinance is an urgency measure of the City Council of the City of Calexico and shall take effect immediately upon passage. This Interim Ordinance shall remain in force and effect for a period of forty-five (45) days from the date of passage of this Ordinance, and shall, thereafter, expire unless and until the City Council has extended this Interim Ordinance by a four-fifths (4/5) vote of the City Council prior to its expiration, all in accordance with Section 65858. The immediate effective date of this Interim Ordinance is necessary to preserve and protect the public health, safety, and welfare of the residents of the City of Calexico.

**PASSED, ADOPTED, AND APPROVED** by the City Council of the City of Calexico at the regular meeting this 18th day of May, 2010.

CITY OF CALEXICO CITY COUNCIL

\_\_\_\_\_  
David Ouzan,  
Mayor

\_\_\_\_\_  
Lourdes  
Cordova City  
Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Jennifer M. Lyon, City Attorney

STATE OF CALIFORNIA    )  
CITY OF CALEXICO        ) SS.  
COUNTY OF IMPERIAL    )

I, Lourdes Cordova, City Clerk of the City of Calexico, and ex-officio Clerk of the City Council do hereby certify under the penalty of perjury, that the foregoing urgency Ordinance No. , was adopted by the City Council at a meeting of said City



Council held on the 18th day of May, 2010, and that it was so adopted by the following vote:

ROLL CALL;       AYES:  
                      NOES:  
                      ABSENT:  
                      ABSTAIN:

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Lourdes Cordova, City Clerk